

Senate Committee on Environment and Public Works
Hearing entitled, “Oversight of the Cause, Response, and Impacts of EPA’s Gold King
Mine Spill” on September 16, 2015
Questions for the Record for U.S. EPW Administrator, Gina McCarthy

Chairman Inhofe:

1. Please provide a list of all inactive or abandoned mine sites across the country where EPA has led or overseen non-EPA lead removal or remedial actions between January 2009 and the present date. For each site, please identify: (a) whether the cleanup action was designated as an (i) emergency removal, (ii) time-critical removal, (iii) non-time critical removal; or (iv) remedial action; (b) the date when the contractor mobilized to carry out the removal or remedial action; (c) the lead agency or entity overseeing the cleanup; (d) a summary of the current status of cleanup work at the site including; (e) whether (i) the site has been included on the National Priorities List or (ii) is under consideration for inclusion; (f) whether the site included a collapsed mine portal or adit and, if so, (ii) whether hydrological pressure was tested to determine the risk of a potential blowout and, if so, (iii) how pressure was tested; (g) (i) an estimate of the flow of mine water or acid mine drainage from the site, (ii) whether such water or drainage is or will be treated, and (iii) whether the flow or drainage is subject to a federal or state discharge permit; (h) EPA’s costs to date for cleanup; and (i) (i) the name of any contractor performing or assisting with the removal, (ii) the contract number, and (iii) and the amount paid to the contractor to date.
2. On August 12, 2015, EPA announced that Regions had been directed to suspend field investigative work at mine sites and to identify sites with similarities to the Gold King Mine site and to identify any immediate threats at such sites. Please summarize the results of this review and include the names and location of all such mine sites that were identified as having similarities with the Gold King Mine site and where immediate threats were identified. Please include a summary of the status of any removal actions these sites.
3. According to the March 20, 2013, Removal Site Evaluation for the Red and Bonita Mine, a well was drilled from above the collapsed entrance to test for water pressure. (a) How much did it cost to drill the test well and perform the water pressure test at the Red and Bonita Mine? (b) The September 24, 2014, action memorandum approving funding for a removal action at the Red and Bonita Mine estimates that the removal work at the Red and Bonita Mine site would cost about \$1.7 million. Does that figure include the costs for performing any work at the Gold King Mine site?
4. The August 8, 2015 Summary Report of EPA’s Internal Review of the Gold King Mine Blowout states that EPA and its contractors were unable to drill a well at the Gold King Mine site to test water pressure at the collapsed mine entrance because of the time, cost, and site conditions. Please explain how similar site conditions, timing, and cost considerations did not prevent drilling a test well at the Red and Bonita Mine site.

5. The removal action at the Red and Bonita Mine (including the action at the Gold King Mine site) was designated as time-critical. However, investigative work at the site began around 2010, the collapsed mine portal was rebuilt in 2013, and work to install a bulkhead was approved in 2014. Please explain why the Red and Bonita Mine site was designated as “time-critical” when work at the site has been conducted over several years and is ongoing. In your response, please identify applicable statutory requirements, regulations, policies, and guidance documents concerning the factors used to designate a removal as time-critical as opposed to non-time-critical.
6. In early 2011, the owner of the Gold King Mine, the Mogul Mine, and Part of the Red and Bonita Mine (Todd Hennis, doing business as the San Juan Corp.) apparently withdrew permission for EPA to access the mine sites. In May 2011, EPA issued an order under CERCLA to obtain access to the Red and Bonita, Gold King, and Mogul mines to conduct field investigation, drill holes and install monitoring wells, and take soil and water samples. Please describe what, if any holes were drilled and monitoring wells installed, and water samples taken at the Gold King Mine site pursuant to this order.
7. An Engineering Evaluation/Cost Analysis (EE/CA) is required for non-time-critical removal actions. As the removal action at the Red and Bonita Mine (and the Gold King Mine) was designated as “time-critical,” no such EE/CA was required to be conducted. Please describe whether any engineering assessment was performed at the Red and Bonita Mine (and the Gold King Mine) to assess the safety of the work site.
8. In May 2015, Environmental Restoration, LLC (EPA’s contractor) developed a work plan for the Gold King mine that stated, in part, “[c]onditions may exist that could result in a blow-out of the blockages and cause a release of large volumes of contaminated mine waters and sediment from inside the mine, which contain concentrated heavy metals.” To address the water volume, Environmental Restoration planned to install a pipe (called a “stinger”) through the collapsed mine entrance so water could be pumped and treated. Please describe the process used by EPA to evaluate the technical merits and safety of this work plan, including whether any of the EPA personnel who participated in this review (a) were mining engineers and (b) personnel from the Office of Emergency Management participated in reviewing and/or approving the work plan.
9. The health and safety plan developed for this cleanup was boilerplate and was not tailored to the risks of a mine site. It did not even contain a worst-case scenario like the blowout that occurred. Please describe what if any requirements there are concerning the development of health and safety/emergency response plans at removal actions at abandoned and inactive mine sites.
10. Please explain why the Health and Safety Plan at page 22 refers to the “Concord Chemical Site” instead of the Red and Bonita Mine or Gold King Mine sites.
11. Although the health and safety plan for the Red and Bonita Mine site stated that a satellite phone would be available for emergency communication purposes, no such device was present at the Gold King Mine site, and workers there were unable to notify the National Response Center or emergency personnel from the blowout location. What are the

requirements, policies, and procedures concerning the deployment and use of communication equipment, including satellite phones, for emergency notification purposes by on-scene coordinators and other EPA or contractor staff performing removal actions?

12. On August 18, 2015, EPA announced the Department of the Interior (DOI) had been selected to conduct an “independent” review of the Gold King mine events. Please answer: (a) why was DOI selected to lead this review; (b) what involvement, if any, did the White House (including the Office of Management and Budget or the Council on Environmental Quality) have on this process; (c) when was DOI first contacted to lead this review and by whom; (d) were any other (i) federal agencies, (ii) states, or (iii) non-governmental entities contacted about leading and/or participating in this review; (e) why did EPA not ask the Office of Inspector General to conduct this review; (f) does DOI’s responsibility for cleaning up contaminated mine sites on federal land and its natural resource and Native American trust responsibilities compromise its ability to conduct an independent assessment of causes of and response to the Gold King Mine spill; and (g) will EPA be reimbursing DOI for the cost of this review?
13. The installation of a bulkhead at the nearby Sunnyside Mine-American Tunnel appears to have caused the water level to rise inside the mine works at the Red and Bonita Mine and the Gold King Mine. The portal for the Sunnyside Mine is located on unpatented Bureau of Land Management land. As such, what responsibility, if any, may the Department of the Interior have for the cleanup of the Red and Bonita Mine and Gold King Mine?
14. In 2008, the United States and the State of Colorado reached an agreement with Standard Metals, memorialized in a consent decree, resolving claims for reimbursement of response costs incurred (or expected to be incurred) in connection with several sites, including the Sunnyside Mine in Silverton, Colorado. Please summarize the status of this consent decree, including compliance with the terms by Standard Metals regarding payment of any judgment, recovery from any insurance claims, and conveyance of real property. Please also discuss whether the consent decree would prevent the United States from seeking recovery of any response costs from Standard Metals associated with the removal action at the Red and Bonita Mine and Gold King Mine sites.
15. DOI announced on August 20, 2015, that the Bureau of Reclamation would lead its review of the Gold King Mine spill. According to EPA documents and press reports, the Bureau of Reclamation has not cooperated with EPA’s efforts to address contaminated mine water and to clean up the California Gulch Superfund Site in Leadville, Colorado. For example, in 2008 Lake County, Colorado, commissioners declared a state of emergency over concerns about the buildup of contaminated mine water at the Bureau of Reclamation’s Leadville Mine Drainage Tunnel. (See, http://www.nytimes.com/2008/02/28/us/28leadville.html?_r=0.) In another example, EPA was forced to revise its remedy to clean up Operable Unit 6 for the California Gulch Superfund Site because Reclamation would not cooperate. (See, ftp://ftp.epa.gov/r8/calgulch/OU6/RODFeasibilityStudiesRIFS/CG_OU6RODAmdmmentSep2010.pdf.) Please describe the basis for Reclamation’s objections and efforts to resolve the

disagreements about Reclamation's cleanup responsibility for the California Gulch Superfund Site, including any involvement by the White House.

16. According to EPA's ECHO database, the Bureau of Reclamation's Leadville Mine Drainage Tunnel has received a notice of significant violation for its Clean Water Act permit. (See, <https://echo.epa.gov/detailed-facility-report?fid=110063915429>.) Please describe the basis for the violation notice and any efforts that have been undertaken to resolve the issue and bring the Reclamation facility into compliance with the Clean Water Act.
17. Were you (Administrator McCarthy) aware of the issues involving the Bureau of Reclamation's Leadville Mine Drainage Tunnel when you decided to request the Department of the Interior to conduct the independent review of the Gold King Mine spill?
18. A recent internal EPA review found numerous management and communication problems within the Office of Emergency Management, which is the office that oversees emergency and time-critical removal actions such as the one being performed at the Gold King Mine site. At the September 16, 2015, hearing you (Administrator McCarthy) were asked, "Have the recent problems with the EPA Office of Emergency Management contributed to the Gold King Mine spill or affected EPA's response?" You (Administrator McCarthy) responded, "I am not aware of recent problems with our Office of Environmental Management." Please clarify for the record whether you are aware of the review conducted by Region 2 Deputy Administrator of the Office of Emergency Management and, if so, how you became aware of the review.
19. Please describe what steps, if any, EPA has taken to respond to the internal management review of the Office of Emergency Management.
20. Please describe what involvement, if any, the Office of Emergency Management (OEM) had in overseeing the time-critical removal of the Red and Bonita Mina and Gold King Mine sites, including the number of OEM staff who were involved and the dates of any site visits that occurred as part of any such OEM oversight, prior to the August 5, 2015 blowout.
21. Please describe whether EPA followed all of the notice requirements of section 103 of CERCLA and section 304 of the Emergency Planning and Community Right to Know Act after the Gold King Mine blowout occurred.
22. Concerns have been raised by downstream water users that they were not given timely notice of the blowout and the potential risks associated with the flow of contaminated water. What steps, if any, did EPA take to ensure that downstream entities, including state, county, local and Tribal governments, water and irrigation districts, and agricultural users, were properly notified of the blowout? In your response, please specify when and how EPA provided notice to the Navajo Nation and the Southern Ute Nation.

23. Please identify what lessons EPA has learned and what steps EPA is taking to improve communication and the process for providing timely notification of downstream users who may be affected by a release such as the one that occurred at the Gold King Mine blowout.
24. Under CERCLA section 119, EPA may indemnify contractors for damages caused by negligence of a contractor working on a removal action. Did EPA indemnify any of the contractors working at the Gold King Mine site?
25. In your testimony, you state that “EPA has and will continue to take responsibility to help ensure that the Gold King Mine release is cleaned up.” Will EPA take financial responsibility for financial loss experienced by any local business or farmers as the result of the blowout?
26. How many claims has EPA received to date for damages associated with the Gold King Mine blowout, and what is the status of any such claims?
27. Will EPA seek to avoid liability under the Federal Tort Claims Act by arguing that EPA was not negligent, EPA’s actions were discretionary, or that the harm was caused by an independent contractor?
28. What are EPA’s current activities related to possible listing of the Red and Bonita Mine and Gold King Mine sites on the National Priorities List (NPL)?
29. Would EPA move forward with an NPL listing over the objections of the State of Colorado and local governments?
30. If EPA includes these mine sites and the Animas River watershed on the NPL list, would EPA have the authority to include any downstream locations where contamination from these sites may be present, including areas as far away as the state of New Mexico, as part of the NPL site? If so, what factors would EPA consider in determining the geographic scope of the NPL site?
31. Would inclusion of these mine sites and the Animas River watershed on the NPL list guarantee funding for cleanup by EPA?
32. According to the Government Accountability Office, DOI’s Bureau of Land Management has identified over 7,000 abandoned mines on BLM lands. Would listing the Animas River watershed on the NPL result in EPA forcing the DOI or other federal land management agencies to address abandoned mines on public lands?
33. Has EPA ever ordered DOI to conduct a cleanup of a contaminated abandoned or inactive mine site on federal land? If, yes, please identify the site and the status of the cleanup.
34. How many CERCLA section 107(b) comfort/status letters and settlement agreements/orders on consent has EPA issued to “Good Samaritans” in connection with a voluntary cleanup of an abandoned or inactive mine site?

35. Please describe the role that an On-Scene Coordinator would have in a voluntary “Good Samaritan” cleanup pursuant to the CERCLA administrative tools. In your response, please discuss whether the On-Scene Coordinator would be involved in all such cleanups or only certain ones that posed significant risks, involved a certain cost threshold, or involved significant technical or engineering challenges.
36. Under what circumstances would a “Good Samaritan” be considered an “operator” and need to obtain a NPDES permit for continuous discharge from a passive treatment system installed as part of a voluntary clean up at an abandoned or inactive mine site?
37. On August 31, 2015, EPA and several environmental petitioners filed a joint order of consent (settlement) to establish a schedule for administrative proceedings under CERCLA section 108(b). Please describe what role and input (a) the Office of Management and Budget, (b) the Department of the Interior, (c) the Department of Agriculture, and (d) states had in this settlement.
38. Please describe how EPA will consider financial assurance requirements imposed by other Federal agencies and states on the hardrock mining industry as it considers action under CERCLA section 108(b).
39. At the hearing you noted that CERCLA 108(b) would not provide funding for legacy contamination, like that at abandoned mine lands sites. Is CERCLA 108(b) a tool to address abandoned mines?

Senator Fischer:

1. Does the EPA’s proposed RFS rule for 2014, 2015, and 2016 trigger a reset of the entire RFS program? If yes, how does EPA plan to rewrite the remainder of the Congressionally-approved volumes? And how would this impact the renewable fuels industry and farmers?
2. Is the justification to lower the RFS volumes for 2014, 2015, and 2016 being used as a reason to trigger a reset of the entire RFS program?
3. I’m concerned that the EPA’s treatment of E15 and Reid Vapor Pressure limits are driving fuel retailers away from carrying the fuel. Do you have a plan to equalize the regulatory treatment of E10 and E15 so E15 is not disadvantaged in the marketplace?
4. What methodology is the EPA using to estimate the supply of renewable natural Gas (RNG)?
5. Why is RCNG and RLNG limited to a D3 RIN when they are often used as a diesel substitute in heavy duty engines?
6. Is EPA aware that a gallon-equivalent of renewable electricity (22.6 kilowatt hours) can propel a vehicle four times as far, and replace four times as much gasoline, as a gallon of ethanol can? If so, why has EPA assigned an equivalence value of 1.0 to both of those renewable fuels?

CLEAN POWER PLAN

7. The EPA has forecasted that the CPP will increase both the price of electricity and natural gas. Increased costs directly impact the competitiveness of energy-intensive trade-exposed manufacturers, such as chemicals, steel, aluminum, paper, glass and countless other industries. My concern is that middle class manufacturing jobs and GHG emissions will move offshore when energy costs rise. This is called GHG leakage. The EU ETS and California's cap and trade systems recognize this problem and give allowances to manufacturers.

Has the EPA studied the impact of GHG leakage and the loss of middle class jobs due to the CPP? If so, what are the results? If not, why not?

8. Manufacturers are concerned about the precedent setting nature of the CPP. The CPP requires existing electric generators to reduce more GHG emissions than can be reduced from inside-the-fence line. If manufacturers are required to reduce more GHG emissions than can be reduced from inside-the-fence line, they will not be able to compete with foreign competition.

What is to prevent an environmental group from suing the EPA, forcing the EPA to regulate the manufacturing sector in the same manner as the electric generators?